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SIXTH DIVISION
March 30, 2012

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LEVINE LEICHTMAN CAPITAL PARTNERS, INC.,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County.
)	
v.)	No. 10 L 12201
)	
LOUIS STERLING, SR.,)	
)	The Honorable
Respondent-Appellant.)	James N. O'Hara,
)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Robert E. Gordon and Justice Palmer concurred in the judgment.

ORDER

¶ 1 *HELD:* After entering a Supreme Court Rule 224 order allowing a petition for discovery, the trial court was divested of jurisdiction where no other matters were pending before the court; therefore, it exceeded its authority in entering subsequent orders.

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¶ 2 Respondent, Louis Sterling, appeals the trial court's various orders related to a Supreme Court Rule 224 (eff. May 30, 2008) petition filed by petitioner, Levine Leichtman Capital Partners, Inc. (LLCP), seeking discovery for litigation in California. Respondent contends the trial court erred in granting petitioner's Supreme Court Rule 224 petition for discovery and in failing to dismiss that order and issue sanctions against petitioner. Based on the following, we vacate the trial court's void orders and dismiss respondent's appeal.

¶ 3 FACTS

¶ 4 On October 26, 2010, LLCP filed a Rule 224 petition seeking discovery from respondent in order to "ascertain the identities of those who are responsible for or have information pertaining to damages related to" litigation in California involving LLCP as a defendant and respondent's son as a plaintiff. On October 27, 2010, a "Summons for Discovery" was entered by the trial court providing that a petition seeking an "order of discovery" had been filed and a "hearing will be held to determine whether such an Order shall be entered in this case." The scheduled hearing date was December 2, 2010. The Cook County sheriff's office attempted to serve respondent on November 17, 2010, and November 21, 2010, without success. On December 2, 2010, the trial court entered an order continuing the matter until December 9, 2010. A special process server was appointed on December 9, 2010, and respondent was served on January 3, 2011. On January 7, 2011, the trial court entered a case management order notifying respondent that he had "until January 31, 2011, to file his appearance and to answer the Rule 224 Petition."

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¶ 5 On January 31, 2011, respondent filed an appearance, through counsel, and filed an answer to LLC's Rule 224 petition for discovery. In the answer, respondent stated that he had repeated conversations via telephone and email with his son regarding his son's employment with LLC, the alleged discrimination his son experienced during his employment with LLC, the resulting health issues experienced by his son, and his son's subsequent employment with a different company. Respondent maintained that "no record[s] of communication [were] kept." In response to the trial court's February 9, 2011, case management order instructing respondent to provide an "appropriate response with affidavit," respondent added an affidavit to his answer and filed it on February 18, 2011. Then, on March 4, 2011, the trial court entered a case management order providing that LLC was "granted leave to issue [a] subpoena for Sterling's emails to America Online or internet service provider." Counsel for petitioner and respondent exchanged correspondence and ultimately settled on the date of April 7, 2011, for LLC to conduct an at-home forensic computer inspection of respondent's computer. However, in a letter dated March 25, 2011, respondent's new counsel informed LLC's counsel that respondent would not comply with the request for a computer inspection.

¶ 6 On March 28, 2011, respondent's new counsel filed an appearance and a motion to dismiss, contending that LLC improperly filed the Rule 224 petition for discovery because LLC sought discovery related to damages in the California litigation and Rule 224 is limited to identify potential defendants. On March 31, 2011, LLC filed a motion to convert its Rule 224 petition for discovery to a Supreme Court Rule 204(b) (eff. Jan. 1, 1996) petition for deposition, arguing that respondent was "in possession of information and documents related to the

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California litigation." Also on March 31, 2011, respondent filed a motion for sanctions pursuant to Supreme Court Rules 137 (eff. Feb. 1, 1994) and 219 (eff. July 1, 2002), contending LLCPC did not have a good faith basis for seeking Rule 224 discovery but, rather, filed the petition for discovery "solely to oppress, harass and embarrass the Respondent in order to obtain an advantage in the California litigation." On April 4, 2011, the trial court entered an order denying respondent's motion to dismiss, denying respondent's motion for sanctions, and granting LLCPC's motion to convert its Rule 224 petition for discovery to a Rule 204(b) petition for issuance of a subpoena.

¶ 7 On April 4, 2011, respondent filed a notice of appeal, appealing the trial court's March 4, 2011, case management order allowing issuance of a subpoena for respondent's emails and the trial court's April 4, 2011, order in its entirety.

¶ 8 **DECISION**

¶ 9 As a threshold matter, we must determine whether we have jurisdiction to consider respondent's substantive appeal. LLCPC contends that we do not have jurisdiction because neither of the orders are final and appealable. Respondent, however, contends the trial court's March 4, 2011, order is appealable because the trial court violated his due process rights, thereby making the order void and open to challenge at any time because the trial court exceeded its authority. As to the trial court's April 4, 2011, order, respondent contends that the court similarly violated his due process rights when it allowed LLCPC to convert its pleading from a Rule 224 petition for discovery to a Rule 204(b) petition for issuance of a subpoena and, therefore, the order is void and may be challenged at any time. Respondent further contends that the trial court's ruling on

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his motion to dismiss effectively resulted in a final judgment and is, therefore, appealable.

¶ 10 Pursuant to Rule 224, "[a] person or entity who wishes to engage in discovery for the sole purpose of ascertaining the identity of one who may be responsible in damages may file an independent action for such discovery." Ill. S. Ct. R. 224(a)(1)(i) (eff. May 30, 2008). Rule 224 further provides:

"The action for discovery shall be initiated by the filing of a verified petition in the circuit court of the county in which the action or proceeding might be brought or in which one or more of the persons or entities from whom discovery is sought resides. The petition shall be brought in the name of the petitioner and shall name as respondents the persons or entities from whom discovery is sought and shall set forth: (A) the reason the proposed discovery is necessary and (B) the nature of the discovery sought and shall ask for an order authorizing the petitioner to obtain such discovery. The order allowing the petition will limit discovery to the identification of responsible persons and entities and where a deposition is sought will specify the name and address of each person to be examined, if known, or, if unknown, information sufficient to identify each person and the time and place of the deposition." Ill. S. Ct. R. 224(a)(1)(ii) (eff. May 30, 2008).

Additionally, the Committee Comments provide:

"This rule provides a tool by which a person or entity may, with leave of court, compel limited discovery before filing a lawsuit in an effort to determine

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the identity of one who may be liable in damages. The rule is not intended to modify in any way any other rights secured or responsibilities imposed by law.

***. The rule facilitates the identification of potential defendants through discovery depositions or through any of the other discovery tools set forth in Rules 201 through 214. The order allowing the petition will limit discovery to the identification of responsible persons and entities." Ill. S. Ct. R. 224, Committee Comments (adopted Aug. 1, 1989).

A Rule 224 order "automatically expires 60 days after issuance" unless it is "extended for good cause." Ill. S. Ct. R. 224(b) (eff. May 30, 2008).

¶ 11 Respondent has the right to challenge the trial court's March 4, 2011, and April 4, 2011, orders on voidness grounds because " [a] judgment, order or decree entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved, is void, and may be attacked at any time or in any court, either directly or collaterally.' " *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103, 776 N.E.2d 195 (2002) (quoting *Barnard v. Michael*, 392 Ill. 130, 135, 63 N.E.2d 858 (1945)).

¶ 12 The trial court's January 7, 2011, order was final and appealable. Although discovery orders generally are considered interlocutory and not appealable, "a Rule 224 petition is final because it finally adjudicates the rights of the parties and terminates the litigation." *Beale v. Edgemark Financial Corp.*, 279 Ill. App. 3d 242, 245, 664 N.E.2d 302 (1996). Accordingly, respondent had 30 days to file an appeal to challenge the January 7, 2011, order granting LLCP's

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Rule 224 petition for discovery. *Pritza v. Village of Lansing*, 405 Ill. App. 3d 634, 940 N.E.2d 1164 (2010) (pursuant to Supreme Court Rule 303(a)(1) (eff. June 4, 2008), appeals from final judgments must be filed within 30 days). Respondent did not do so and, therefore, waived his ability to challenge that order.

¶ 13 Once the January 7, 2011, order was entered, the trial court was divested of jurisdiction because the order was final and appealable. *Gaynor v. Burlington Northern & Sante Fe Ry.*, 322 Ill. App. 3d 288, 289, 750 N.E.2d 307 (2001) ("[b]ecause the filing of a Rule 224 petition creates an independent action for discovery [citation] and an order entered on a Rule 224 petition finally adjudicates the rights of the parties and terminates the litigation, appellate jurisdiction exists"). Therefore, the trial court's subsequent orders, *i.e.*, the March 4, 2011, and April 4, 2011, orders, were void as there was no matter pending before the court. See *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 531, (2001) ("[i]f jurisdiction is lacking, any subsequent judgment of the court is rendered void"). LLCP agrees. In its appellee brief, LLCP maintained "[a]ll orders following the January 7, 2011 Order were made after a final and appealable order divesting the trial court of jurisdiction. ***. All orders following the January 7, 2011 order would therefore be void. Jurisdiction was not re-vested with the trial court following the entry of the order granting the Rule 224 petition."

¶ 14 The trial court's ruling on respondent's motion for sanctions is similarly void because it was filed more than 30 days after the final and appealable order of January 7, 2011. The trial court did not have jurisdiction to entertain the motion. Ill. S. Ct. R. 137 (eff. Feb. 1, 1994) (motions pursuant to the rule must be filed within 30 days of entry of a final judgment); see

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Twardowski v. Holiday Hospitality Franchising, Inc., 321 Ill. App. 3d 509, 512-13, 748 N.E.2d 222 (2001).

¶ 15 We, therefore, dismiss the appeal and vacate the trial court's March 4, 2011, and April 4, 2011, orders.

¶ 16 **CONCLUSION**

¶ 17 The trial court's March 4, 2011, and April 4, 2011, orders were void and are vacated.

¶ 18 Appeal dismissed; vacated.